



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No.

Beth A. Burrous
FOLEY & LARDNER
Washington Harbour
3000 K Street, N.W.,
Suite 500
Washington, DC 20007-5109

COPY MAILED

JAN 23 2006

OFFICE OF PETITIONS

In re Patent No. 6,878,733 :
Shenoy et al. : DECISION ON REQUEST
Issue Date: April 12, 2005 : FOR
Application No. 09/716,332 : RECONSIDERATION OF
Filed: November 21, 2000 : PATENT TERM ADJUSTMENT
Atty Docket No. 038602-1060 :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705(b)," filed April 27, 2005. Patentees request that the patent term adjustment indicated on the face of the Letters Patent be corrected from two hundred ninety-five (295) days to four hundred fifteen (415) days.

The request for reconsideration of the patent term adjustment under § 1.705(d) is **DISMISSED**.

Patentees are given **TWO (2) MONTHS** from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

On April 12, 2005, the above-identified application matured into U.S. Patent No. 6,878,733, with a revised Patent Term Adjustment of 295 days. The instant request for reconsideration filed April 27, 2005 was timely filed within 2 months of the date the patent issued. See § 1.705(d). Patentees assert that an

additional period of adjustment should have been entered for the Office taking in excess of three years to issue the patent.

A review of the record confirms that two hundred thirty-six (236) days were entered for Office delay in issuing the patent pursuant to § 1.702(b). Furthermore, this is the correct period of adjustment for the delay. It is noted that the instant patent issued 3 years and 508 days after its filing date. However, as stated in the decision mailed February 8, 2005, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. Further, in considering the overlap, the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). See 35 U.S.C. 154(b)(1)(B); 35 U.S.C. 154(b)(2)(A); and 37 CFR 1.703(f). In this instance, it was properly concluded that a total of 272 days overlapped. Thus, the additional non-overlapping period of 236 days was entered for Office delay in issuing the patent.

In view thereof, the patent term adjustment of 295 days indicated in the patent is correct.

Pursuant to the payment of fees on request for reconsideration of patent term adjustment filed March 24, 2004, and decision mailed February 8, 2005, no additional fees are required for consideration of this request for reconsideration.

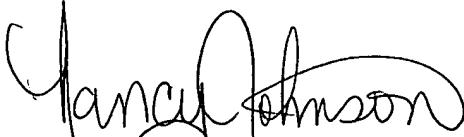
Further correspondence with respect to this decision should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By fax: (571) 273-8300
ATTN: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is fluid and cursive, with the first name "Nancy" and last name "Johnson" clearly distinguishable.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions